

DAY & NANCE
1060 Wigwam Parkway
Henderson, NV 89074
(702) 309-3333

STEVEN L. DAY, ESQ.
Nevada Bar No. 3708
JAMES R. NANCE, ESQ.
Nevada Bar No.
DAY & NANCE
1060 Wigwam Parkway
Henderson, NV 89074
Tel (702) 309-3333
Fax (702) 309-1085
sday@daynance.com
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ANN T. HARTMAN,)	
)	CASE NO.
Plaintiff,)	
)	
vs.)	
)	
RICHARD LEWIS, FINANCIAL)	
INDEPENDENCE GROUP, LPL)	
FINANCIAL, LLC, and DOES I)	
through X, inclusive,)	
)	Jury Demanded
Defendants.)	

COMPLAINT

Comes now Plaintiff ANN HARTMAN, by and through her attorneys of record,
DAY & NANCE, and complains and alleges as follows:

JURISDICTION

1. This court has jurisdiction over this case and the venue is proper under §10b
of the Securities Exchange Act of 1934 [15 U.S.C.A. § 78j(b)], Securities and Exchange
Commission Rule 10b-5 [17 C.F.R. § 240.10b-5] and common-law fraud, breach of

1 contract, to recover damages for Defendants' excessive trading or churning in Plaintiff's
2 IRA securities account.

3 **PARTIES**

4 2. Plaintiff ANN T. HARTMAN is a resident of the State of Nevada.

5 3. Defendant RICHARD LEWIS is a resident of the State of Nevada, and, at all
6 relevant times, was working as a financial adviser and/or account executive for
7 Defendants FINANCIAL INDEPENDENCE GROUP, LPL FINANCIAL, LLC, and/or
8 certain DOE Defendants.
9

10 4. Defendant FINANCIAL INDEPENDENCE GROUP is a Nevada corporation
11 licensed and doing business in Clark County, Nevada, and is an LPL FINANCIAL, LLC,
12 financial advisor.

13 5. Upon information and belief, LPL FINANCIAL, LLC, is a Massachusetts
14 limited liability company licensed and doing business in the State of Nevada offering,
15 among other things, financial planning for customers similarly situated to Plaintiff.
16

17 4. That the true names or capacities, whether individual, corporate, associate,
18 or otherwise of Defendants Does I through X, inclusive, are unknown to Plaintiff, who
19 therefore sues said Defendants by such fictitious names. Plaintiff is informed and believes
20 and thereon alleges that each of the Defendants designated herein as a DOE are
21 responsible in some manner for the churning of Plaintiff's LPL Financial IRA account;
22 that Plaintiff will ask leave of this court to amend this Complaint to insert the true names
23 and capacities of said Defendants DOES I through X, inclusive, when same have been
24 ascertained by Plaintiff, together with appropriate charging allegations and to join such
25 Defendants in this action.
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27 5. At all relevant times, Defendants were the employers, masters, and/or
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1 principals of DOES I through X and employed said agents, employees, and servants to
2 maintain and operate said business in a professional and non-negligent manner.

3 6. At all relevant times, DOES I through X, inclusive, were the agents,
4 employees, and/or servants of Defendants, and were at all relevant times acting within the
5 scope and/or performance of said agency, master/servant, and/or employment
6 relationship.
7

8 **GENERAL ALLEGATIONS**

9 7. On or about February of 2012, Plaintiff opened an IRA account with LPL
10 Financial through account executive Richard Lewis who was employed with Financial
11 Independence Group.

12 8. That monies were transferred to the LPL Financial IRA account from an
13 account with another Broker/Dealer.

14 9. That between February, 2012 and July, 2013, Defendants induced activity in
15 Plaintiff's account which was excessive in volume and frequency in light of Plaintiff's
16 investment and investment objectives for the purpose of obtaining commissions.
17

18 10. That Defendant RICHARD LEWIS specifically explained to the Plaintiff on
19 or about the time the LPL Financial IRA account was opened that he was putting
20 Plaintiff's monies in a safe fund and that if any trades were done in the fund the fund
21 would pay all the commissions. The Plaintiff explained to Defendant Lewis that she was
22 not a sophisticated investor and that she did not spend a lot of time going through every
23 statement.
24

25 11. That the Plaintiff would see Defendant Lewis at the Anthem Country Club
26 several times a week wherein Defendant Lewis assured the Plaintiff that her IRA was
27 doing great.
28

1 12. That at no time did Defendant Lewis explain to the Plaintiff that he was
2 excessively trading in her account, that he was doing unauthorized trades, that she was
3 paying large commissions each month or that the value of her account had fallen
4 dramatically.

5 13. That at the time of the excessive trading in Plaintiff's LPL account,
6 Defendants did not inform Plaintiff that the trades were being made or obtain
7 authorization from the Plaintiff to trade in her account.
8

9 **FIRST CAUSE OF ACTION**

10 **(Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b))**

11 14. Plaintiff incorporates by reference all previous allegations set forth above as
12 if more fully set forth herein.

13 15. That the trades being made by Defendants in Plaintiff's account were for
14 securities not suitable for Plaintiff's stated investment objectives.

15 16. That at no time did Defendants communicate with the Plaintiff prior to
16 making the excessive trades.
17

18 17. That at no time did Plaintiff authorize Defendants to trade in her account
19 without obtaining her consent.

20 18. That Defendants were in a position to exercise control over the volume and
21 frequency of trading in Plaintiff's IRA account.

22 19. That the Plaintiff, being an unsophisticated investor, relied upon Defendants
23 with respect to their initial recommendation and the general handling of her account so
24 that Defendants were placed in de facto control over the volume and frequency of trading
25 in Plaintiff's IRA account.
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1 20. That Defendants obtained control over Plaintiff's IRA account by
2 misrepresenting their expertise in the market, misrepresenting the present status and
3 condition of Plaintiff's IRA account and failing to communicate with the Plaintiff about
4 the trading taking place in her account.

5 21. That Defendants are jointly and severally liable with and to the same extent
6 as Defendant RICHARD LEWIS to Plaintiff, Defendants FINANCIAL INDEPENDENCE
7 GROUP and LPL FINANCIAL, LLC, having control of Defendant RICHARD LEWIS
8 within the meaning of § 20(a) of the Securities Exchange Act of 1934 [15 U.S.C.A. §
9 78(t)(a)] and general principals of agency.

10 22. Defendants acted with the intent to defraud Plaintiff, or with such willful
11 and reckless disregard for the interests of Plaintiff as to be tantamount to an intent to
12 defraud Plaintiff.

13 23. As a direct and proximate result of Defendants' unlawful excessive trading or
14 churning in Plaintiff's account, Plaintiff sustained damages from losses on commissions
15 earned in excess of \$10,000.00 and from a loss in value of Plaintiff's portfolio in excess of
16 \$10,000.00.

17 24. Defendants are jointly and severally liable to Plaintiff for exemplary or
18 punitive damages in an amount in excess of \$10,000.00 for Defendants' excessive trading
19 or churning in Plaintiff's account, Defendants having acted unlawfully, fraudulently, with
20 a conscious disregard of Plaintiff's rights, and with full knowledge of the consequences of
21 their conduct and the damage being caused to Plaintiff.

22 25. Plaintiff has had to secure the services of legal counsel in order to prosecute
23 this action and, therefore, are entitled to receive reasonable attorney's fees and costs from
24 Defendants.

SECOND CAUSE OF ACTION
(Fraud)

26. Plaintiff incorporates by reference all previous allegations set forth above as if more fully set forth herein.

27. Defendants made false representations of material fact regarding:

- a. Plaintiff's monies would be invested in a safe fund and if any trades were done, the fund paid all commissions; and
- b. Plaintiff's fund was doing well.

28. The Defendants made these false representations with full knowledge that they were false.

29. That Defendants accepted and benefitted from the purchase and sale of the fund in Plaintiff's account and the subsequent churning of her account.

30. That Defendants made false representations with the intention to induce Plaintiff to open an account and rely upon Defendant Lewis' statements that everything was going well.

31. That Plaintiff relied upon the representations of Defendants.

32. Due to Defendants' fraud, Plaintiff has suffered damages in excess of \$10,000.00.

33. Plaintiff has had to secure the services of legal counsel in order to prosecute this action and, therefore, are entitled to receive reasonable attorney's fees and costs from Defendants.

34. Defendants' conduct described herein was intended to cause injury to Plaintiff and/or was conduct carried on by Defendants with a willful and conscious disregard of Plaintiff's rights and constitutes malice, oppression, or fraud pursuant to NRS 42.005, thereby entitling Plaintiff to punitive and/or exemplary damages in an

1 amount appropriate to punish or set an example of Defendants.

2 35. Plaintiff has had to secure the services of legal counsel in order to prosecute
3 this action and, therefore, are entitled to receive reasonable attorney's fees and costs from
4 Defendants.

5
6 **THIRD CAUSE OF ACTION**
(Conversion)

7 36. Plaintiff incorporates by reference all previous allegations set forth above as
8 if more fully set forth herein.

9 37. In justifiable reliance upon the representations, warranties and promises
10 made by Defendants, Plaintiff opened an account with Defendants and rolled her IRA into
11 that account.

12 38. That Defendants churned Plaintiff's account with the intent of generating
13 excessive commissions.

14 39. As a result of the Defendants' conduct, Plaintiff has been permanently
15 deprived of the use and enjoyment of much of her investment all to her damage in an
16 amount in excess of \$10,000.

17 40. That Defendants' conduct constitutes a conversion of Plaintiff's personal
18 property.

19 41. The aforementioned acts of Defendants were willful, fraudulent, oppressive,
20 and malicious entitling Plaintiff to an award of punitive damages in an amount to be
21 determined at trial.

22 42. Because of Defendants' conduct, Plaintiff has been required to retain the
23 services of an attorney in order to prosecute this section, and therefore, are entitled to an
24 award of reasonable attorney's fees and costs of suit incurred herein.
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FOURTH CAUSE OF ACTION
(Unjust Enrichment)

43. Plaintiff incorporates by reference all previous allegations set forth above as if more fully set forth herein.

44. As a result of the Defendants' conduct, Defendants obtained the use and benefits of Plaintiff's investment monies all which were acquired as a result of Defendants fraud and conversion, Plaintiff was not entitled to the use and benefits of her investment.

45. Despite Defendants' knowledge that they were not entitled to such benefits and uses, Defendants failed and refused to reimburse Plaintiff for her losses.

46. That unless Defendants reimburse Plaintiff for losses incurred as a result of Defendants' fraudulent activity and conversions, Defendants will be unjustly enriched to the detriment of Plaintiff.

47. Because of the Defendants' conduct, Plaintiff has been required to retain the services of an attorney in order to prosecute this action, and therefore, are entitled to an award of reasonable attorney's fees and costs of suit incurred herein.

FIFTH CAUSE OF ACTION
(Constructive Trust)

48. Plaintiff incorporates by reference all previous allegations set forth above as if more fully set forth herein.

49. By reason of the Defendants' fraudulent and wrongful conduct, as described in this Complaint, and to prevent them from being unjustly enriched thereby, a constructive trust arose in favor of Plaintiff with respect to the proceeds of Defendants' wrongful activity, conversions and breaches of fiduciary duty.

50. The Defendants have a duty to (1) transfer and deliver to Plaintiff all of their interest in the proceeds of their wrongful activity, conversions and breaches of fiduciary

1 duty and (ii) account to Plaintiff for the fair value of those proceeds, together with all
2 income relating thereto.

3 51. Plaintiff has no adequate remedy at law.

4 52. Because of the Defendants' conduct, Plaintiff has been required to retain the
5 services of an attorney in order to prosecute this action, and therefore, are entitled to an
6 award of reasonable attorney's fees and cost of suit incurred herein.
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8 **SIXTH CAUSE OF ACTION**
(Failure to Supervise)

9 53. Plaintiff incorporates by reference all previous allegations set forth above as
10 if more fully set forth herein.
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12 54. That Defendants LPL FINANCIAL, LLC, FINANCIAL INDEPENDENCE
13 GROUP, and/or certain DOE Defendants, had a duty to reasonably supervise the activities
14 of Defendant RICHARD LEWIS, and/or certain DOE Defendants.

15 55. That Defendants failed to reasonably supervise the activities of their
16 employees, agents and/or servants, so as to allow Defendant RICHARD LEWIS, and/or
17 certain DOE Defendants to churn Plaintiff's IRA account, all to Plaintiff's damage in an
18 amount in excess of \$10,000.00.

19 56. Because of the Defendants' conduct, Plaintiff has been required to retain the
20 services of an attorney in order to prosecute this action, and therefore, are entitled to an
21 award of reasonable attorney's fees and cost of suit incurred herein.
22

23 **SEVENTH CAUSE OF ACTION**
(Breach of Covenant of Contract)

24 57. Plaintiff incorporates by reference all previous allegations set forth above as
25 if more fully set forth herein.
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27 58. Defendants made various representations, warranties and promises
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1 (“agreements”) regarding the investments that would take place in Plaintiff’s IRA account.

2 59. Defendants failed to meet their obligations to follow those representations,
3 warranties and promises and in so doing, breached the “agreements” with Plaintiff.

4 60. As a result of Defendants’ breach of contract, Plaintiff has suffered damages
5 in excess of \$10,000.00.

6 61. It has been necessary for Plaintiff to engage the services of an attorney to
7 commence this action and are, therefore, entitled to reasonable attorneys’ fees and costs.

8 **EIGHTH CAUSE OF ACTION**
9 (Breach of Covenant of Good Faith and Fair Dealing)

10 62. Plaintiff incorporates by reference all previous allegations set forth above as
11 if more fully set forth herein.

12 63. Defendants owed the Plaintiff an implied covenant to act in good faith and
13 deal fairly.

14 64. Defendants have breached their covenant of good faith and fair dealing owed
15 to Plaintiff.

16 65. As a proximate cause of the aforementioned wrongful conduct of
17 Defendants, Plaintiff has suffered damages in excess of \$10,000.00.

18 66. It has been necessary for Plaintiff to engage the services of an attorney to
19 commence this action and are, therefore, entitled to reasonable attorneys’ fees and costs.

20 67. Defendants’ conduct described herein was intended by them to cause injury
21 to Plaintiff and/or was conduct carried on by Defendants with a willful and conscious
22 disregard of Plaintiff’s rights and constitutes malice, oppression, or fraud pursuant to
23 NRS 42.005 thereby entitling Plaintiff to punitive and/or exemplary damages in an
24 amount appropriate to punish or set an example of Defendants.

25 WHEREFORE, Plaintiff prays for judgment against the Defendants, and each of
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1 | them, as follows:

2 | 1. For general/compensatory damages in an amount in excess of TEN
3 | THOUSAND DOLLARS (\$10,000.00);

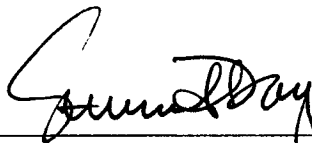
4 | 2. For punitive damages in an amount in excess of TEN THOUSAND
5 | DOLLARS (\$10,000.00);

6 | 3. For reasonable attorneys' fees and all costs of suit; and

7 | 4. For such other and further relief as the Court deems just and proper under
8 | the circumstances.
9 |

10 | DATED this 4th day of October, 2013.

11 | DAY & NANCE

12 | 
13 | By _____

14 | STEVEN L. DAY, ESQ.
15 | Nevada Bar No. 3708
16 | JAMES R. NANCE, ESQ.
17 | Nevada Bar No. 9878
18 | 1060 Wigwam Parkway
19 | Henderson, NV 89074
20 | Attorneys for Plaintiff
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